

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION (WP) NO. 1337/2018

Smt. Lilabai Dilip Tarole
Aged about 59 years
Occupation – Agriculturist
Resident of Patonda,
Post Jawalukhed Buj. Via Dahihanda
Tah. Akot, Dist Akola.
(Org. Deft.)

..... PETITIONER

// VERSUS //

Shyamrao S/o. Sonaji Bagde
Aged about 66 years
Occupation – Agriculturist
R/o. Patonda, Post Jawalukhed Buj. Via Dahihanda
Tah. Akot, Dist. Akola
(Org. Plff.)

.... RESPONDENT

Mr. S.N. Bhattad, Advocate for the petitioner
Mr. R.G. Kavimandan, Advocate for the respondent

CORAM : AMIT B. BORKAR, J..

DATED : 21/09/2022

ORAL JUDGMENT :

Heard. **Rule.** Rule made returnable forthwith. Heard finally
by consent.

2. By this writ petition under Article 227 of the Constitution of India, the writ petitioner is challenging the order passed by the Trial Court allowing the amendment in the exercise of power under Order VI Rule 17 of the Code of Civil Procedure, 1908 (for short the "CPC"). The respondent-original plaintiff had filed suit for a temporary injunction seeking an injunction against the petitioner not to disturb the

respondent's possession over the suit property. Undisputedly, the trial of the suit had commenced. The suit was fixed for argument. At that stage, the plaintiff applied for an amendment of the plaint. On perusal of the application, the mandatory requirement of due diligence as mandated by the proviso of Order VI Rule 17 of the CPC is not made. The only explanation in the application is that the respondent is seeking an alternative plea of possession if the petitioner is found to be in possession of the suit property.

3. The issue involved is no longer *res integra* in view of the judgment of the Apex Court in the case of ***Vidyabai & Ors vs. Padmalatha & Anr. [(2009) 2 SCC 409]***. The Apex Court, in the said judgment, has held that the explanation about due diligence as contemplated by the proviso of Order VI Rule 17 of the CPC is a jurisdictional fact, and unless such jurisdictional fact is pleaded and the Court records findings, the Court has no jurisdiction to allow the application for amendment.

4. The learned Advocate for the respondent relied on the Apex Court's judgment in the case of ***Life Insurance Corporation of India Vs. Sanjeev Builders Private Ltd. and anr., [2022 LiveLaw (SC) 729]***. On consideration of the facts stated therein, the Apex Court had no occasion to consider the proviso of Order VI Rule 17 of the CPC. The Apex Court has laid down the parameters for allowing the amendment in the context of the application for amendment of pleadings generally. Since the

judgment in the case of ***Vidyabai & Ors.*** (*supra*) is more applicable in the facts of the case. Since, in the case of ***Life Insurance Corporation of India*** (*supra*), the Apex Court has not considered the proviso to Order VI rule 17 of the CPC, in my opinion, the judgment of the Apex Court in the case of ***Vidyabai & Ors.*** (*supra*) shall be more applicable.

5. In view of the authoritative pronouncement of the Apex Court in the case of ***Vidyabai & Ors*** (*supra*) and considering the stage of the suit, in my opinion, the Trial Court could not have allowed the application of the amendment. I, therefore, pass the following order:-

(i) Rule is made absolute in terms of prayer Clause 2 of the writ petition, which reads as under:-

“2. Quash and set aside the impugned order dated 7.12.2017 in RCS No. 107/2012 passed by 2nd Joint Civil Judge, Junior Division, Akot District Akola (Shyamrao Bagde – Vs - Smt. Lilabai Tarole)(Place at Annexure-E).”

6. Pending civil application, if any, is also disposed of.

JUDGE

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